

**THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MARTHA KRISTIAN
and JAMES D. MASTERMAN,

Plaintiffs,

V.

COMCAST CORPORATION et al.,

Defendants.

CIVIL ACTION NO.:
03-12466-EFH

JACK ROGERS and PAUL PINELLA,

Plaintiffs,

V.

COMCAST CORPORATION and
AT&T BROADBAND,

Defendants.

CIVIL ACTION NO.:
04-10142-EFH

**STIPULATED MOTION FOR ENTRY OF
AGREED ORDER AFTER MANDATE ISSUES**

The parties in the above-captioned matter hereby stipulate and jointly move this Court for entry of an Agreed Order in the form attached hereto, at the appropriate time. The grounds for this motion are as follows:

1. On April 20, 2006, the U.S. Court of Appeals for the First Circuit issued its opinion in

the consolidated appeals of these matters. The opinion addresses certain issues related to the arbitration agreements between the parties and specifically acknowledges that Defendants may move, for this Court's consideration, to withdraw their motions to compel arbitration. Op. at 78, note 25.

2. Under Fed.R.App.P. 40(a)(1), either party may file a petition for rehearing within 14 days after entry of judgment. In the present case, a petition for rehearing is due on May 4, 2006. Under Fed.R.App.P. 41(d), a petition for rehearing stays the issuance of mandate.

3. The parties have reached agreement, reflected in the attached Agreed Order, that Defendants' Motions to Compel Arbitration, dated May 12, 2004, Docket Number 17 and Docket Number 9 in the above-captioned matters, respectively, are withdrawn, and that all claims raised in these actions shall be resolved in court and not through arbitration.

4. The parties respectfully submit that the attached Agreed Order be entered by the Court promptly upon the issuance of mandate from the First Circuit. Under Fed.R.App.P. 41(b), the mandate is due to be issued on or about May 11, 2006.

5. Because any petitions for rehearing with the First Circuit Court of Appeals are due to be filed tomorrow, the parties respectfully request a Fed. R. Civ. P. 16 conference with the Court as soon as possible, hopefully today, to discuss entry of the Agreed Order in the form attached once the mandate has issued. If the Court indicates at the conference that it will enter the Agreed Order after the mandate issues, no petition for rehearing will be filed, and the mandate will issue on or about May 11, 2006. If a petition for rehearing is filed, then this Stipulation is of no effect and is not binding on the parties and, in that event, the parties do not agree to the issuance of the attached Order.

6. The parties are available to appear before the Court pursuant to Fed. R. Civ. P. 16,

either in person or by telephone.

WHEREFORE, the parties jointly request that the Court enter the Agreed Order, in the form attached, as soon as the mandate issues.

Respectfully submitted,

/s/ John P. Zavez

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 3, 2006.

/s/ Timothy C. Blank

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AGREED ORDER

May __, 2006

HARRINGTON, S.D.J.

Pursuant to Defendants' request to withdraw their Motions to Compel Arbitration in the above cases, and the Plaintiffs' agreement to such withdrawals based on the terms and

conditions referenced herein which terms and conditions have been agreed to by Defendants, it is
HEREBY ORDERED:

1. Defendants' Motions to Compel Arbitration, dated March 12, 2004, Docket Number 17 and Docket Number 9 in the above-captioned matters, respectively, are WITHDRAWN. All claims asserted in the above matters by Plaintiffs Kristian, Masterman, Rogers and Pinella and all other putative members of a class comprised of cable television customers who subscribe or subscribed to video programming services (other than solely to basic cable services) from Defendants or their affiliates or the predecessors of Defendants or their affiliates (hereinafter collectively "Defendants") in and around Boston, Massachusetts, that is or may be proposed to be certified in the above matters shall be resolved in court in this action and not through arbitration;

2. Additionally, Defendants shall not for any purpose in these actions, including class certification, (i) allege that an arbitration agreement, or any provision of an arbitration agreement, applies to Plaintiffs Kristian, Masterman, Rogers, or Pinella, or any other putative member of a class that is or may be proposed to be certified in the above matters or (ii) file a motion to compel arbitration with respect to any such persons. Defendants also shall not allege that a subscriber agreement or a similar document or agreement, or any provision of a subscriber agreement or similar document or agreement, precludes the recovery of treble damages, or attorney's fees and costs, by Plaintiffs Kristian, Masterman, Rogers, or Pinella, or any other putative member of a class comprised of cable television customers who subscribe or subscribed to video programming services (other than solely to basic cable services) from Defendants in and around Boston, Massachusetts, that is or may be proposed to be certified in the above matters;

3. Upon the Court's execution of this Order, Defendants waive any right that they

may have to seek rehearing or other review or appeal of the decision of the United States Court of Appeals for the First Circuit, dated April 20, 2006, in the above cases (the “Decision”). If the Court executes this Order after Defendants have sought review or appeal of the Decision, Defendants shall withdraw or dismiss such review or appeal within three days after execution of this Order.

SO ORDERED.

EDWARD F. HARRINGTON
United States Senior District Judge